

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No. CR 10-00562-LHK
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENSE
v.	)	COUNSEL'S REQUEST FOR
	)	APPOINTMENT OF CO-COUNSEL
THOMAS JOSEPH O'MEARA,	)	
	)	
Defendant.	)	

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The Court hereby denies Defense Counsel's Ex Parte Application for CJA Funds for Co-Counsel. If at the April 4, 2012 trial setting, Defense Counsel cannot set this case for trial between January and July 2013, three years after the indictment was filed, then the Court will relieve Defense Counsel and appoint new counsel. The Court is very sympathetic to Defense Counsel's family member's health situation and applauds Defense Counsel for her diligent work in other cases. However, further delays in Defendant O'Meara's case are not serving the interests of justice or Defendant O'Meara.

To place this Order in context, the Court hereby reviews the procedural history of this case. An indictment charging Defendant O'Meara of one count of conspiracy to commit wire fraud and mail fraud, fourteen counts of wire fraud, eleven counts of mail fraud, and six counts of money laundering was filed on July 22, 2010. Dkt. 1. The indictment alleges that Defendant O'Meara was a Carmel resident, president of a real estate development company, chief executive officer of a real estate broker corporation, and a licensed real estate broker. Dkt. 1 at ¶¶ 1-3. The indictment

1 further alleges that Defendant O'Meara and his business partner defrauded numerous private  
2 investors out of \$16 million in connection with a golf course development project. Dkt. 1 at ¶¶ 19-  
3 20.

4 On August 6, 2010, Defendant O'Meara, represented by Defense Counsel Jeanne DeKelter  
5 made his first appearance in this district. Dkt. 5. Defendant had been arraigned previously in the  
6 Central District of California. *Id.* Magistrate Judge Trumbull appointed Ms. DeKelter to represent  
7 Defendant O'Meara on August 6, 2010. Dkt. 10.

8 Status reviews before Judge Fogel took place on September 2, 2010; October 14, 2010; and  
9 December 16, 2010. Dkt. 11, 13, and 17. Defendant has not made a personal appearance in this  
10 case since the September 2, 2010 status review. Dkt. 13, 17, 19, 21, 23, 26, 28, 30, 33, 35, 37, 39,  
11 and 41.

12 The parties stipulated to continuances of the following status conferences to provide  
13 Defense Counsel reasonable time necessary for effective preparation, taking into the account the  
14 exercise of due diligence: January 17, 2011, March 17, 2011, April 28, 2011, June 9, 2011, July  
15 18, 2011, and August 18, 2011. Dkt. 19, 21, 23, 26, 28. The parties agreed to continue the August  
16 18, 2011 status conference to October 6, 2011. Dkt. 30. Based on the stipulations and Defense  
17 Counsel's Declaration in Support of Her Ex Parte Application for CJA Funds for Co-Counsel, it  
18 appears that the government completed its document production in June 2011. Dkt. 19, 21, 23, 26,  
19 28, 30.

20 On September 26, 2011, this case was reassigned from Judge Fogel to the undersigned  
21 judge. Dkt. 31. The undersigned judge moved the October 6, 2011 status conference to October 5,  
22 2011. Dkt. 33. The parties stipulated to continue the October 5, 2011 status conference to October  
23 26, 2011 to provide Defense Counsel reasonable time necessary for effective preparation, taking  
24 into the account the exercise of due diligence. Dkt. 35.

25 At the October 26, 2011 status conference, Defense Counsel asked for a four month  
26 continuance because of her family member's health situation. Dkt. 37. The Court granted the  
27 continuance to February 15, 2012, but requested that the February 15, 2012 status conference be a  
28 trial setting. The parties stipulated to a continuance from February 15, 2012 to February 29, 2012

1 to provide Defense Counsel reasonable time necessary for effective preparation, taking into the  
2 account the exercise of due diligence. Dkt. 39.

3 At the February 29, 2012 status conference, Defense Counsel requested another four month  
4 continuance to the end of June 2012 because of her family member's health situation. The Court  
5 stated its sympathy for Defense Counsel's situation, but stated that the case needed to progress.  
6 The Court stated that if Defense Counsel could not devote sufficient time to get this case ready for  
7 trial, then replacement counsel should be appointed. Defense Counsel suggested in the alternative  
8 that co-counsel, rather than replacement counsel, be appointed and stated that she would file a  
9 motion for co-counsel. The Court then set a trial setting hearing for April 4, 2012, and ordered  
10 Defendant O'Meara to appear personally on that date. Dkt. 41.

11 On March 9, 2012, the Clerk's Office received Defense Counsel's Ex Parte Application for  
12 CJA Funds for Co-Counsel which was addressed to CJA Supervising Attorney Cari Waters for  
13 approval. The Court has reviewed Defense Counsel's Application and concludes that appointment  
14 of co-counsel is unwarranted.

15  
16 Dated: April 2, 2012

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18 LUCY H. KOH  
19 United States District Judge  
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